



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 4751-99

30 May 2000

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Naval Reserve, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the undesirable discharge issued on 6 February 1945.

2. The Board, consisting of Messrs. Morgan, Silberman and Frankfurt reviewed Petitioner's allegations of error and injustice on 24 May 2000, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner was inducted and began a period of active duty in the Naval Reserve on 17 June 1944 at age 28. His record

indicated that at the time of his enlistment he had completed only six years of formal education and was illiterate.

d. Petitioner's record reflects that on 16 August 1944, while in recruit training, he was convicted by a summary court-martial of a six day period of unauthorized absence (UA). He was sentenced to five days of solitary confinement on bread and water with one full ration every third day. Petitioner completed recruit training on 10 October 1944, was advanced to seaman second class, and assigned to the fleet.

e. Petitioner's medical record reflects that on 8 November 1944 he was evaluated for flat feet. He reported that had he suffered from painful feet for as long as he could remember, and they had partially incapacitated him for many years. It was noted that he was unable to drill or stand guard duties in recruit training. General examination was essentially negative except for numerous scars over his body from multiple stab wounds. The only positive physical finding was "bilateral pes planus with exostoses from both first metatarsals."

f. Petitioner was convicted by a second summary court-martial of a 15 day UA. He was sentenced to five days of solitary confinement on bread and water with a full ration every third day and a forfeiture of \$128.

g. The medical record further reflects that on 8 January 1945, x-rays of Petitioner's feet revealed a bilateral short first metatarsals with hallux valgus deformities. The examining physician opined "I believe this man is having severe foot trouble of which he complains. His degree of disability is such that I doubt his even being of value to the naval service. Believe steps should be taken for survey from service when status as a prisoner is decided."

h. On 6 February 1945, Petitioner received an undesirable discharge by reason of unfitness due to lack of proper Navy morale. He was considered uncooperative, antagonistic, evasive, sullen, lacking in judgment and insight, unreliable, demonstrating general unfitness for service.

i. Petitioner states his feet prevented him from drilling properly, and he was wrongly accused of not trying to perform.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board specifically notes Petitioner was inducted into the service and was considered illiterate. It appears to the Board that Petitioner may have been unjustly discriminated against because of a belief that he was malingering when, in fact, he had a severe foot problem. The Board also notes that the misconduct of record, two periods of UA totalling 21 days, was not terribly serious. The Board does not believe that such misconduct warranted the life-long stigma of an undesirable discharge, especially since the record suggests that with his limited education and foot problems, his chances of completing his enlistment were less than favorable. Had the nation not been at war, he most likely would not have been inducted. The Board concludes that it would appropriate and just to recharacterize his undesirable discharge to a general discharge under honorable conditions.

RECOMMENDATION:

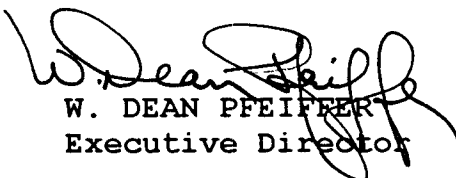
- a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 6 February 1945 by reason of unfitness vice the undesirable discharge issued on that date. This should include the issuance of a new DD Form 214.
 - b. That no further relief be granted.
 - c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.
 - d. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 27 July 1999.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director